

1 Jeffrey M. Feldman (AK Bar No. 7605029)  
2 SUMMIT LAW GROUP PLLC  
3 315 Fifth Avenue South, Suite 1000  
4 Seattle, WA 98104-2682  
5 Phone: (206) 676-7000  
6 jefff@summitlaw.com

7 Ralph H. Palumbo (WA Bar No. 4751)  
8 Lynn M. Engel (WA Bar No. 21934)  
9 (Pro Hac Vice)  
10 YARMUTH LLP  
11 1420 Fifth Avenue, Suite 1400  
12 Seattle, WA 98101  
13 Phone: (206) 516-3800  
14 rpalumbo@yarmuth.com  
15 lengel@yarmuth.com

16 *Attorneys for Bristol Bay Economic Development Corporation,*  
17 *Bristol Bay Native Association, Inc. and Bristol Bay Reserve Association*

18 Megan R. Condon (AK Bar No. 1810096)  
19 Matthew N. Newman (AK Bar No. 1305023)  
20 NATIVE AMERICAN RIGHTS FUND  
21 745 West 4th Avenue, Suite 502  
22 Anchorage, AK 99501  
23 Phone: (907) 276-0680  
24 mcondon@narf.org  
25 mnewman@narf.org

26 *Attorneys for United Tribes of Bristol Bay*

Scott Kendall (AK Bar. No. 0405019)  
HOLMES, WEDDLE & BARCOTT  
701 W. 8th Avenue, #700  
Anchorage, AK 99501  
Phone: (907) 274-0666  
smkendall@hwb-law.com

*Attorney for Bristol Bay Regional*  
*Seafood Development Association, Inc.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA  
AT ANCHORAGE**

BRISTOL BAY ECONOMIC  
DEVELOPMENT CORPORATION, *et al.*,

Plaintiffs,

v.

CHRIS HLADICK, U.S.  
ENVIRONMENTAL PROTECTION  
AGENCY, *et al.*,

Defendants.

CASE NO. 3:19-CV-00265-SLG

SALMONSTATE, *et al.*,

Plaintiffs,

v.

CHRIS HLADICK, U.S.  
ENVIRONMENTAL PROTECTION  
AGENCY, *et al.*,

Defendants.

CASE NO. 3:19-CV-00267-SLG

TROUT UNLIMITED,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY, *et al.*,

Defendants.

CASE NO. 3:19-CV-00268-SLG

1 **PLAINTIFFS' REPLY IN SUPPORT OF**  
2 **MOTION FOR ENTRY OF SCHEDULING ORDER**

3 Plaintiffs submit this Reply in support of their Motion for Entry of Scheduling  
4 Order (ECF 23 & 24) ("Motion").

5 Plaintiffs have proposed a scheduling order based on the need for a final ruling on  
6 the merits of the withdrawal of the 2014 Proposed Determination of Defendant  
7 Environmental Protection Agency ("EPA") under Section 404 of the Clean Water Act,  
8 before the U.S. Army Corps of Engineers ("Corps") issues a record of decision on a permit  
9 application for the proposed Pebble Mine in Bristol Bay, Alaska. In response, Defendants  
10 mostly take issue with Plaintiffs' proposed deadlines for filing their opening brief and for  
11 motions to supplement the agency record. ECF 25 ("Resp."). But Defendants' arguments  
12 are overstated and otherwise without merit.  
13

14 1. Plaintiffs have structured their proposed schedule based on their expectation  
15 that the Corps will issue its permitting record of decision in May 2020. Mot. at 4. In  
16 response, however, Defendants assert they "are not in a position to state when the Corps  
17 will make a permit decision." Resp. at 3. But in EPA's August 30, 2019, notice of its  
18 decision to withdraw the Proposed Determination, the agency stated it "has and will  
19 continue to work constructively with the Corps as a cooperating agency" and that "EPA  
20 plans to continue to work with the Corps . . . on the next steps in the [National  
21 Environmental Policy Act] process, including the development of the final [Environmental  
22 Impact Statement] and other information to inform the Corps' permit decision."<sup>1</sup> And  
23

24 \_\_\_\_\_  
25 <sup>1</sup> EPA, Notification of Decision to Withdraw Proposed Determination to Restrict the Use  
26 of an Area as a Disposal Site; Pebble Deposit Area, Southwest Alaska, 84 Fed. Reg.  
45,749, 45,754 (Aug. 30, 2019).

documents received in September 2019 from the Corps pursuant to a Freedom of Information Act request show the Corps intends to issue its final record of decision for the Pebble Mine permit by May 29, 2020. *See* Ex. A (attached hereto).<sup>2</sup> If Defendants have more accurate information about the Corps' permitting timeline (especially given Defendants' stated cooperation with the Corps), Defendants should share such information with Plaintiffs and the Court to ensure a timely and orderly resolution of this matter under a schedule that obviates the need for additional or interim relief. The expected timing of the Corps' issuance of its final record of decision is an ascertainable fact relevant to the Court's schedule for this matter and its ability to provide timely relief.

2. In their Response, Defendants express concern that, under Plaintiffs' proposed schedule, Plaintiffs would file their opening merits brief before any motion to supplement (should there be one) is fully briefed and decided. Resp. at 3-4. But this Court recently has approved a scheduling order under which merits briefing would begin prior to the resolution of any motion to supplement the agency record. *See* Scheduling Order at 1-2, *Se. Alaska Conservation Council v. U.S. Forest Serv.*, No. 1:19-cv-00006-SLG, ECF 7 (D. Ala. June 13, 2019) (providing parties would "work in good faith to address any and all issues concerning the adequacy, scope, and/or content of the administrative record amongst themselves" and "[a]ny issues which the Parties cannot resolve among themselves shall be presented to the Court for resolution on the same schedule proposed for the Parties' Rule 16.3(c) briefs"). Here, Plaintiffs do not currently anticipate that motions to

---

<sup>2</sup> The documents in Exhibit A were produced by the Corps pursuant to an August 16, 2019 FOIA request submitted by the Natural Resources Defense Council seeking "all records in the Army Corps' possession, custody or control sent or received from the following email address: [poaspecialprojects@usace.army.mil](mailto:poaspecialprojects@usace.army.mil)" (the email address believed to be used for communicating about the Pebble Mine permitting process). *See* Ex. A.

1 supplement will be necessary. But even if they are, such motions would be limited, and to  
2 the extent they would interfere with merits briefing deadlines, then those deadlines could  
3 be adjusted when and if that exigency arises.

4       **3.** Similarly, Defendants assert that Plaintiffs' proposed schedule would  
5 "unfairly" reduce Defendants' time to file an opposition to any motion to supplement from  
6 14 to seven days. Resp. at 4. But again, it is unlikely there will even be a need to file a  
7 motion to supplement. And even if such a circumstance should arise, it is expected that  
8 any such motion would be very limited, and Defendants would be able to request  
9 additional time to respond for good cause if it were necessary to do so.

10       **4.** Finally, in anticipation that intervenor-defendants may seek to participate in  
11 these proceedings, and to facilitate efficiency, Plaintiffs proposed that any intervenor-  
12 defendants' brief on the merits be filed one week after Defendants' brief and be limited to  
13 4,000 words. Mot. at 4. Defendants, however, argued in response that because no parties  
14 have actually sought to intervene, it is premature and inappropriate to set limits on such  
15 intervention at this time. Resp. at 5. But there is no harm setting such a comprehensive  
16 schedule now, since doing so will avoid any case disruption later should a party seek to  
17 intervene. Nor have Defendants shown that Plaintiffs' proposed requirements for  
18 intervenors would cause any prejudice to them or any prospective intervenor. To the  
19 contrary, since the interests of intervenor-defendants would largely be aligned with those  
20 of Defendants', it is entirely fair and appropriate for the intervenor briefs to follow shortly  
21 after the filing of Defendants' briefs. And Plaintiffs' proposed word count for intervenor-  
22 defendant merits briefs (4,000 words) is double what Plaintiffs' reserved for each plaintiff  
23 group should they file supplemental merits briefs (2,000 words). Mot. at 4 & 5.

\* \* \*

For all the foregoing reasons, the Court should grant Plaintiffs' Motion and enter the scheduling order as proposed by Plaintiffs. *See* ECF 23, at 4-6.

DATED this 12<sup>th</sup> day of November, 2019.

SUMMIT LAW GROUP PLLC  
*Attorneys for Bristol Bay Economic  
Development Corporation, Bristol Bay Native  
Association, Inc. and Bristol Bay Reserve  
Association*

By: s/ Jeffrey M. Feldman  
Jeffrey M. Feldman (AK Bar No. 7605029)

YARMUTH LLP  
*Also Attorneys for Bristol Bay Economic  
Development Corporation, Bristol Bay Native  
Association, Inc. and Bristol Bay Reserve  
Association*

By: s/ Ralph H. Palumbo  
Ralph H. Palumbo, *Pro Hac Vice*  
(WA Bar No. 4751)  
By: s/ Lynn M. Engel  
Lynn M. Engel, *Pro Hac Vice*  
(WA Bar No. 21934)

NATIVE AMERICAN RIGHTS FUND  
*Attorneys for United Tribes of Bristol Bay*

By: s/ Megan R. Condon  
Megan R. Condon (AK Bar No. 1810096)  
By: s/ Matthew N. Newman  
Matthew N. Newman (AK Bar No. 1305023)

HOLMES, WEDDLE & BARCOTT  
*Attorney for Bristol Bay Regional  
Seafood Development Association, Inc.*

1 By: s/ Scott Kendall  
2 Scott Kendall (AK Bar. No. 0405019)  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

PLAINTIFFS' REPLY IN SUPPORT OF MOTION  
FOR SCHEDULING ORDER - 7  
CASE NO. 3:19-CV-00265-SLG CONSOLIDATED

SUMMIT LAW GROUP PLLC  
315 FIFTH AVENUE SOUTH, SUITE 1000  
SEATTLE, WASHINGTON 98104-2682  
Telephone: (206) 676-7000  
Fax: (206) 676-0001

## CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2019, a copy of the foregoing Plaintiffs' Reply in Support of Motion for Scheduling Order was served upon counsel of record through the Court's CM/ECF system.

### *Attorneys for Plaintiffs*

Megan R. Condon  
Matthew N. Newman  
NATIVE AMERICAN RIGHTS FUND  
[mcondon@narf.org](mailto:mcondon@narf.org)  
[mnewman@narf.org](mailto:mnewman@narf.org)

Scott M. Kendall  
HOLMES, WEDDLE & BARCOTT  
[smkendall@hwb-law.com](mailto:smkendall@hwb-law.com)

Abraham J. Shanedling  
Paul Werner  
Rachelle Bishop  
Steven P. Hollman  
SHEPPARD, MULLIN, RICHTER, & HAMPTON LLP  
[AShanedling@sheppardmullin.com](mailto:AShanedling@sheppardmullin.com)  
[PWerner@sheppardmullin.com](mailto:PWerner@sheppardmullin.com)  
[RBishop@sheppardmullin.com](mailto:RBishop@sheppardmullin.com)  
[SHollman@sheppardmullin.com](mailto:SHollman@sheppardmullin.com)

Austin E. Williams  
TROUT UNLIMITED  
[awilliams@tu.org](mailto:awilliams@tu.org)

Brian Litmans  
Katherine G. Strong  
TRUSTEES FOR ALASKA  
[blitmans@trustees.org](mailto:blitmans@trustees.org)  
[kstrong@trustees.org](mailto:kstrong@trustees.org)

Erin Whalen  
Thomas S. Waldo  
EARTHJUSTICE (Juneau)



1 [ewhalen@earthjustice.org](mailto:ewhalen@earthjustice.org)  
2 [twaldo@earthjustice.org](mailto:twaldo@earthjustice.org)

3 Jacqueline Miya Iwata  
4 Joel R. Reynolds  
5 Thomas D. Zimpleman  
6 NATURAL RESOURCES DEFENSE COUNSEL  
7 [jiwata@nrdc.org](mailto:jiwata@nrdc.org)  
8 [jreynolds@nrdc.org](mailto:jreynolds@nrdc.org)  
9 [tzimpleman@nrdc.org](mailto:tzimpleman@nrdc.org)

10 *Attorneys for Defendants*

11 Richard L. Pomeroy  
12 U.S. Attorney's Office (Anchorage)  
13 [richard.pomeroy@usdoj.gov](mailto:richard.pomeroy@usdoj.gov)

14 DATED this 12<sup>th</sup> day of November, 2019.

15 */s Denise Brandenstein*  
16 \_\_\_\_\_  
17 Denise Brandenstein, Legal Assistant  
18 *deniseb@summitlaw.com*